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SECTION 6103

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF CALIFORNIA

MAURICE PETER EUNICE, an
individual,

Plaintiff,

v.

UNITED STATES OF AMERICA,
PATRICK KELLY, an individual;
PATRICK RYAN, an individual;
MIKE MERVOS, an individual;
BETHANY WATROUS, an
individual;
STEVE M. KINGKADE, an
individual;
JEFF DAVIS, an individual;
CITY OF EL CAJON, a municipal
corporation;
CITY OF LA MESA, a municipal
corporation and
DOES 1 through 80, INCLUSIVE,

Defendants.

Case No.: 12-cv-1635-WQHBGS

**ANSWER TO SECOND AMENDED
COMPLAINT**

Judge: Gonzalo P. Curiel
Courtroom: 4
Magistrate Judge: Bernard G. Skomal

Complaint Filed: June 29, 2012

Defendant, Jeff Davis (“defendant”), hereby answers plaintiff’s second
amended complaint as follows:

1. In response to paragraph 1, defendant admits jurisdiction is proper.
2. In response to paragraph 2, defendant denies that the court has
jurisdiction over plaintiff’s state law claims.

1 3. In response to paragraph 3, defendant lacks sufficient information as
2 to the allegations contained therein.

3 4. In response to paragraph 4, defendant denies the allegations contained
4 therein.

5 5. In response to paragraph 5, defendant admits the allegations
6 contained therein.

7 6. In response to paragraph 6, defendant lacks sufficient information as
8 to the allegations contained therein.

9 7. In response to paragraph 7, defendant admits the allegations contained
10 therein.

11 8. In response to paragraph 8, defendant lacks sufficient information as
12 to the allegations contained therein.

13 9. In response to paragraph 9, defendant lacks sufficient information as
14 to the allegations contained therein.

15 10. In response to paragraph 10, defendant lacks sufficient information as
16 to the allegations contained therein.

17 11. In response to paragraph 11, defendant admits the allegations
18 contained therein.

19 12. In response to paragraph 12, defendant admits he was the S.W.A.T.
20 commander for the City of El Cajon. Except as expressly admitted, defendant
21 denies the remaining allegations contained in paragraph 12.

22 13. In response to paragraph 13, defendant is without sufficient
23 information or knowledge to form a belief to the allegations relating to DOE
24 defendants contained therein and on that basis denies those allegations.

25 14. In response to paragraph 14, defendant is without sufficient
26 information or knowledge to form a belief to the allegations contained therein and
27 on that basis denies those allegations.

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1 15. In response to paragraph 15, defendant is without sufficient
2 information or knowledge to form a belief as to the allegations relating to DOE
3 defendants contained therein and on that basis denies those allegations.

4 16. In response to paragraph 16, defendant denies he was ever present to
5 execute a warrant obtained by the DEA and is without sufficient information or
6 knowledge to form a belief to the remaining allegations contained therein, and on
7 that basis denies those allegations.

8 17. In response to paragraph 17, defendant is informed and believes the
9 warrant was pursuant to a DEA investigation and on that basis admits the
10 allegations.

11 18. In response to paragraph 18, defendant denies he used explosives or
12 destroyed plaintiff's property, is without sufficient information or knowledge to
13 form a belief to the remaining allegations contained therein and on that basis
14 denies those allegations.

15 19. In response to paragraph 19, defendant is without sufficient
16 information or knowledge to form a belief to the allegations contained therein and
17 on that basis denies those allegations.

18 20. In response to paragraph 20, defendant admits that the City is a
19 municipal corporation and as to DOE defendants is without sufficient information
20 or knowledge to form a belief to the allegations contained therein and on that basis
21 denies those allegations.

22 21. In response to paragraph 21, defendant is without sufficient
23 information or knowledge to form a belief as to DOE defendants and on that basis
24 denies those remaining allegations.

25 22. In response to paragraph 22, defendant lacks sufficient information as
26 to the allegations contained therein.

27 23. In response to paragraph 23, defendant lacks sufficient information as
28 to the allegations contained therein.

1 24. In response to paragraph 24, defendant lacks sufficient information as
2 to the allegations contained therein.

3 25. In response to paragraph 25, defendant lacks sufficient information as
4 to the allegations contained therein.

5 26. In response to paragraph 26, defendant lacks sufficient information as
6 to the allegations contained therein.

7 27. In response to paragraph 27, defendant lacks sufficient information as
8 to the allegations contained therein.

9 28. In response to paragraph 28, defendant lacks sufficient information as
10 to the allegations contained therein.

11 29. In response to paragraph 29, defendant lacks sufficient information as
12 to the allegations contained therein.

13 30. In response to paragraph 30, defendant lacks sufficient information as
14 to the allegations contained therein.

15 31. In response to paragraph 31, defendant lacks sufficient information as
16 to the allegations contained therein.

17 32. In response to paragraph 32, defendant admits the allegations
18 contained therein on information and belief.

19 33. In response to paragraph 33, defendant denies that he was present on
20 plaintiff's property to participate in the execution of the DEA warrant. Defendant
21 is informed and believes that DEA agents and other police officers were at
22 plaintiff's property to execute a search warrant. Except as expressly stated,
23 defendant is without sufficient information or knowledge to form a belief to the
24 remaining allegations contained therein and on that basis denies those allegations.

25 34. In response to paragraph 34, defendant denies that he blew up the
26 doors and windows of plaintiff's property using explosives. Defendant is without
27 sufficient information or knowledge to form a belief to the remaining allegations
28 contained therein and on that basis denies those allegations.

1 35. In response to paragraph 35, defendant denies that he blew up the
2 doors and windows of plaintiff's property using explosives. Defendant is informed
3 and believed that plaintiff owned the properties. Defendant is without sufficient
4 information or knowledge to form a belief to the allegations contained therein and
5 on that basis denies those allegations.

6 36. In response to paragraph 36, defendant denies the allegations
7 contained therein and denies that he blew up plaintiff's property.

8 37. In response to paragraph 37, defendant denies the allegations
9 contained therein.

10 38. In response to paragraph 38, defendant denies the allegations
11 contained therein.

12 39. In response to paragraph 39, defendant denies the allegations
13 contained therein.

14 40. In response to paragraph 40, defendant is without sufficient
15 information or knowledge to form a belief to the allegations contained therein and
16 on that basis denies those allegations.

17 41. In response to paragraph 41, defendant denies the allegations
18 contained therein.

19 42. In response to paragraph 42, defendant denies the allegations
20 contained therein.

21 43. In response to paragraphs 43 through 61, defendant states that no
22 affirmative answer or denial is required as this cause of action is not brought
23 against this responding defendant.

24 44. In response to paragraph 62, defendant realleges his previous
25 responses by reference.

26 45. In response to paragraph 63, defendant states no response is required
27 because the allegations concern legal conclusions rather than facts.

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1 46. In response to paragraph 64, defendant states no response is required
2 because the allegations concern legal conclusions rather than facts.

3 47. In response to paragraph 65, defendant states no response is required
4 because the allegations concern legal conclusions rather than facts.

5 48. In response to paragraph 66, defendant states no response is required
6 as to the legal conclusion contained therein and denies the remaining allegations.

7 49. In response to paragraph 67, defendant states no response is required
8 because the allegations concern legal conclusions rather than facts.

9 50. In response to paragraph 68, defendant states no response is required
10 because the allegations concern legal conclusions rather than facts.

11 51. In response to paragraph 69, defendant states no response is required
12 because the allegations concern legal conclusions rather than facts.

13 52. In response to paragraph 70, defendant states no response is required
14 because the allegations concern legal conclusions rather than facts.

15 53. In response to paragraph 71, defendant states no response is required
16 because the allegations concern legal conclusions rather than facts, and specifically
17 denies that he used explosives to blow up doors and windows.

18 54. In response to paragraph 72, defendant denies the allegations
19 contained therein.

20 55. In response to paragraph 73, defendant denies that he blew up
21 plaintiff's doors and windows with explosives, or that the conduct was prohibited
22 by clearly established law.

23 56. In response to paragraph 74, defendant denies the allegations
24 contained therein.

25 57. In response to paragraph 75, defendant denies that he blew up the
26 doors and windows; defendant states that no response is required as to the
27 remaining allegations because the allegations concern legal conclusions rather than
28 facts.

1 58. In response to paragraph 76, defendant denies the allegations
2 contained therein.

3 59. In response to paragraph 77, defendant denies that he blew up
4 plaintiff's doors and windows. Defendant states that no response is required as to
5 the remaining allegations because the allegations concern legal conclusions rather
6 than facts.

7 60. In response to paragraph 78, defendant denies the allegations
8 contained therein.

9 61. In response to paragraph 79, defendant denies the allegations
10 contained therein.

11 62. In response to paragraphs 98 through 121, defendant states that no
12 affirmative answer or denial is required as the claims and/or causes of action
13 related to these allegations were dismissed by the Court.

14 **AFFIRMATIVE DEFENSES**

15 1. As a first and separate affirmative defense, this answering defendant
16 alleges that if any damages were sustained by plaintiff, the damages were
17 proximately caused by the acts and/or omissions of third parties over whom this
18 answering defendant exercised no control and for whose acts this answering
19 defendant is not responsible.

20 2. As a second and separate affirmative defense, this answering
21 defendant alleges that the injuries complained of and the damages sought by
22 plaintiff were caused directly and proximately by the plaintiff's own negligence,
23 fault, recklessness, or unlawful conduct in and about the matters alleged in the
24 Complaint.

25 3. As a third and separate affirmative defense, this answering defendant
26 alleges that plaintiff knew well the risks, hazards, and dangers necessarily incident
27 thereto, and that if plaintiff has suffered any injuries or is entitled to any damages
28 as alleged in the second amended complaint, said injuries and damages arose from,

1 and were caused by, said risks, hazards, and dangers, knowingly and voluntarily
2 assumed by the plaintiff.

3 4. As a fourth and separate affirmative defense, this answering defendant
4 alleges that if plaintiff sustained any injuries or is entitled to any damages under
5 the circumstances alleged in the second amended complaint, or in any other
6 respect, said injuries and damages were wholly or in part directly and proximately
7 caused by plaintiff's own negligence, carelessness, lack of due care, and fault of
8 third parties. In the event that plaintiff is found to have sustained injuries or to be
9 entitled to any damages, which is denied, this answering defendant is liable only
10 for that portion of any such damage that corresponds to his degree of fault or
11 responsibility and not for the negligence or fault of the plaintiff or any other party
12 or parties, named or unnamed, in the second amended complaint.

13 5. As a fifth and separate affirmative defense, this answering defendant
14 alleges that plaintiff has not alleged and cannot prove any facts showing that the
15 conduct of defendant was the proximate cause of any damages suffered as alleged
16 in the second amended complaint.

17 6. As a sixth and separate affirmative defense, this answering defendant
18 alleges that the allegations which plaintiff set forth in the second amended
19 complaint, which this answering defendant denies, were not a substantial factor in
20 bringing about the alleged injury or injuries, and, therefore, were not contributing
21 causes, or were succeeded by tortious conduct by plaintiff or one or more third
22 parties, whether named or unnamed in the second amended complaint, whose
23 misconduct was an independent, intervening, sole, and proximate cause of any
24 alleged injury or injuries, damage or damages, if any, suffered by the plaintiff.

25 7. As a seventh and separate affirmative defense, this answering
26 defendant alleges that if plaintiff is entitled to any recovery, which this answering
27 defendant denies, such recovery must be reduced by the amount attributable to the
28 failure of plaintiff to mitigate damages.

1 8. As an eighth and separate affirmative defense, this answering
2 defendant alleges that, at all times relevant hereto, defendant acted in good faith,
3 without malice, upon a reasonable belief that plaintiff's tenants were involved in
4 criminal activity and threatening the safety and life of persons.

5 9. As a ninth and separate affirmative defense, defendant alleges that he
6 was acting in good faith and within the scope of his official duties and defendant
7 had no knowledge that the alleged wrongful acts, if any, were illegal and/or
8 unconstitutional, and defendant had no knowledge that the alleged wrongful acts, if
9 any, were violative of plaintiff's rights. Based upon the above, defendant is
10 absolutely immune from suit.

11 10. As a tenth and separate affirmative defense, this answering defendant
12 alleges that defendant was acting on a good faith and reasonable belief that the acts
13 complained of occurred within the scope of defendant's official duties and
14 defendant had no knowledge that the alleged wrongful acts, if any, were illegal
15 and/or unconstitutional nor were said alleged wrongful acts, if any, clearly
16 violative of plaintiff's rights at the time they were committed.

17 11. As an eleventh and separate affirmative defense, defendant alleges
18 that the warrant was based upon probable cause.

19 12. As a twelfth and separate affirmative defense, this answering
20 defendant alleges that the second amended complaint fails to state any claim
21 against this answering defendant upon which relief can be granted.

22 13. As a thirteenth and separate affirmative defense, this answering
23 defendant alleges that plaintiff consented to all acts or conduct of defendant and
24 thereby waived all rights, claims or causes of action alleged to arise therefrom.

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1 **WHEREFORE**, the defendants pray as follows:

- 2 1. That plaintiff take nothing by his second amended complaint;
3 2. That defendant be awarded his attorney fees and cost of suit; and
4 3. For such further relief as the Court deems proper.

5 Dated: July 29, 2013

6 MCDUGAL LOVE ECKIS
7 BOEHMER & FOLEY

8 s/ Carrie L. Mitchell
9 Steven E. Boehmer
10 Carrie L. Mitchell
11 Attorneys for Defendant,
12 JEFF DAVIS